

BILL ANALYSIS

C.S.H.B. 978
By: Burnam
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are an estimated four million disabled Texans who are vulnerable to the loopholes that exist within the current definition of "disabled." For example, James Todd, a Texan who suffers from epilepsy, filed suit in a Texas court, asserting that his early termination from employment resulted from disability discrimination. The court dismissed the case, finding that he could not be classified as suffering from a disability because he was not substantially limited from a major life activity.

The original Americans with Disabilities Act (ADA) failed to provide adequate protection for individuals with disabilities. The U.S. Congress amended the original ADA in the ADA Amendments Act of 2008 to expand protection and clarify the meaning of "disability." The ADA Amendments Act of 2008 was signed into law by President George W. Bush to expand the scope and coverage of the original ADA. Current law in Texas fails to provide sufficient protection for disabled individuals. This bill fulfills Governor Perry's disability initiative to expand opportunities for disabled Texans.

C.S.H.B. 978 brings together the state's plan for improving the lives of disabled Texans and the revised national mandate by the U.S. Congress for eliminating discrimination against individuals with disabilities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 978 amends the Labor Code to require the term "disability" to be construed in favor of broad coverage of individuals under provisions that prohibit employment discrimination against certain classes of individuals to the maximum extent allowed under those provisions and to include an impairment that is episodic or in remission that substantially limits a major life activity when active. The bill requires the determination of whether an impairment substantially limits a major life activity to be made without regard to the ameliorative effects of mitigating measures, including medication; medical supplies, equipment, and appliances; prosthetic limbs and devices; hearing aids, cochlear implants and other implantable hearing devices; mobility devices; oxygen therapy equipment; devices that magnify, enhance, or otherwise augment a visual image, other than eyeglasses and contact lenses that are intended to fully correct visual acuity or eliminate refractive error; the use of assistive technology; reasonable accommodations and auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

C.S.H.B. 978 specifies that its provisions do not affect the standards for determining eligibility for benefits under the Texas workers' compensation program or under a state or federal disability benefit program, and cannot be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination due to the individual's lack of a

disability. The bill prohibits an employer from using a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies. The bill establishes that a respondent in an employment discrimination complaint is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment if the individual's disability is based solely on being regarded as having an impairment that substantially limits at least one major life activity. The bill defines "auxiliary aids and services," "major life activity," and "regarded as having such an impairment."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 978 differs from the original by defining "major life activity" differently. The original defines "major life activity" as including a certain list of activities and operation of major bodily functions whereas the substitute defines "major life activity" as including, but not being limited to, the certain list of activities and operation of major bodily functions.